



**Disadvantaged Business Enterprise (DBE)
Small Business Program**

Federal Fiscal Years 2018 – 2020

**In Compliance With
Title 49 Part 26 of the Code of Federal Regulations (49 CFR 26)**

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Attachment 6 - U.S. Dept. of Transportation's Tips for Goal Setting in the DBE Program

Notice of Nondiscrimination:

Fort Smith Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to FST of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This notice is available in large print, on audio tape and in braille and language assistance is available for limited English proficiency upon request.

INTRODUCTION

Fort Smith Transit (FST) has established a Disadvantaged Business Enterprise (DBE) program in compliance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 which details Fort Smith Transit's process for setting the FFY's 2018-2020 overall goal for DBE participation in federally assisted transit projects.

49 CFR 26 requires that this goal be submitted for review by the Federal Transit Administration (FTA). This submission must include 1) A description of the methodology used to establish the goal, including the base figure and evidence with which it was calculated, and the evidence relied on for any adjustments; and 2) A projection of the portions of the overall goal expected to be met through race/gender-conscious measures, respectively; and should include 3) A summary listing of relevant available evidence of disparity and, where applicable, an explanation of why that evidence was not used to adjust the base figure.

For any questions or comments contact:	Ms. Lori Carr	Fort Smith Transit
	DBE Liaison Officer	P.O. Box 1908
	Transit Superintendent	Fort Smith, AR 72902

Phone: (479) 784-2319

Policy Statement

It is the policy of Fort Smith Transit to ensure that DBE's, as defined in part 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
5. To help remove barriers to the participation of DBE's in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Transit Superintendent has been delegated as the DBE Liaison Officer. In that capacity, the superintendent is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is afforded the same priority as compliance with all other legal obligations incurred by Fort Smith Transit in its financial assistance agreements with the Department of Transportation.

Fort Smith Transit has disseminated this policy statement to the appropriate officials of the organization and all of the components of the organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts. Distributions include Arkansas Highways and Transportation Department, Transit Advisory Commission, local media, local minority based media.

Ken Savage, Transit Director

Date

SUMMARY

Proposed DBE Goal for Federal Fiscal Years 2018–2020

The Fort Smith Transit (FST) proposes the following goal for participation by DBE's on federally assisted transit contracts for FFY's 2018-2020:

Total DBE Goal **4.7%**

FTA/DOT assisted contracts that FST expects to award during FFY 2018-2020 is estimated at \$1,818,000 in total project cost, of which \$1,566,200 are estimated in FTA funds. FST was exempt from DBE requirements FFY's 2015-2017 due to insufficient contractual obligations. The dollar amount was derived by reviewing a list of anticipated constrained projects FFY's 2018-2020.

Therefore, FST has set a goal of expending \$73,611 in FTA, or \$85,446 in total project funds with DBE's FFY 2018-2020.

Public Participation Process

In anticipation of the plan, the FST Transit Director made three separate presentations to students and faculty at the University of Arkansas, Fort Smith campus. The director provided an overview of transit services and planned projects for the service area. The transit director provided a similar overview at the Noon Exchange Club at the Fianna Hills Country Club and the Women's Philanthropic Club at a private residence in Fort Smith.

This report will also be provided to various interested groups during routine City of Fort Smith ward meetings with an offer to meet individually and discuss the proposed goal and rational used to develop the goal.

FST published a notice in both English and Spanish announcing the proposed overall goal in the Times Record, Arkansas Democratic-Gazette and the Lincoln Echo on May 28, 2017. The notice informed the public that the proposed goal and its rational was available for inspection on the City of Fort Smith's website <http://www.fortsmithar.gov/index.php/departments/transit> or during normal business hours at the department's office on 6821 Jenny Lind Road, and that written comments would be accepted for forty-five (45) days from the date of the notice. No comments were received as a result of the postings, displays or presentations.

DESCRIPTION OF METHODOLOGY

The methodology used to calculate the FST's FFY 2018-2020 DBE goal was based on the information provided in 49 CFR Part 26 and specifically Part 26.45 for goal setting information. Other related information was obtained from website search activities.

Background Information

FST provides fixed route, paratransit and demand response public transportation within the city limits of Fort Smith. FST uses federal grant assistance in conjunction with local matching funds to facilitate the operating and capital needs for the public transportation program in Fort Smith, Arkansas. FST made concerted efforts in the past and will continue to work in concert with the Arkansas Highway and Transportation Department and local officials to encourage business entrepreneurs to seek application and qualification from AHTD's DBE program. However, it is widely known across the state and by officials at AHTD that despite cooperative efforts to identify minority contractors for certification as disadvantage enterprises, the number of certified DBE contractors remains limited.

STEP ONE: DEVELOPMENT OF THE BASE GOAL

In Step One of the goal setting process, contractible items were identified and a weighted average figured for each item. Then the base goal was figured using the relative availability (percentage) of DBE's in Arkansas to perform contracts (both prime and sub) scheduled for FFY 2018-2020.

These percentages can be calculated as follows:

$$\text{Base Goal} = \frac{\text{Ready, Willing and Able DBE's}}{\text{All Firms, Ready, Willing \& Able (DBE's \& Non-DBE's)}} = \text{Relative Availability}$$

To further refine this percentage, weighting was applied using both the percentage of work to be done and the availability of DBE's to perform each work category. Reference materials were taken from a combination of website search efforts. The official North American Industry Classification System (NAICS) website was used to determine classification codes and the 2012 economic census data page from the U.S. Census was used to determine the number of firms available for the state of Arkansas [census.gov/programs-surveys/economic-census/data/tables.html]. No relevant information was available in the economic data page of the U.S. Census for NAICS Code 334290 so a separate BING search was performed which provided a list of manufactures specific to the signal priority system firms and nine (9) firms were identified in the U.S., however no firms were identified in Arkansas. The number of DBE firms was taken from the Arkansas Highway and Transportation Department's website listing of certified DBE's. The weight of each category was determined by calculating the relative availability of DBE's in that category against the weight of

contracting funds in each category. See the table below for a detailed explanation of methods used to determine the base goal.

Years	NAICS	Description	Estimated Contractual Obligations Total	Estimated FTA Obligations	% of total Weight	No of DBE's	No of Firms	Relative Availability	Weighted Average
2018	541330	CNG Fueling Station and Facility Design Services	\$18,000	\$16,200	1%	20	341	.059	.00059
2018	236220	CNG Maintenance Facility Modifications	\$300,000	\$270,000	17%	10	341	.029	.0049
2018	237120	CNG Fueling Station Installation	\$800,000	\$720,000	46%	0	64	0	0
2018	511210	Replace Scheduling Software	\$200,000	\$160,000	10%	0	29	0	0
2018 2019	237310	Repair of Accessible Pathways	\$500,000	\$400,000	26%	48	330	.14	.0364
2018 - 2020		Total Projects	\$1,818,000	\$1,566,200	100%	78	1,114		4.7%

STEP TWO: ADJUSTMENTS

There were no disparity studies performed within the market area in the past several years.

Past Participation

FST received a letter of DBE program goals and methodology exemption on November 17, 2014, from Ms. Rebecca E. Rand, Region VI Civil Rights Officer for FFY 2015-2017. Therefore, no medium participation exist to serve as adjustments.

<u>DBE MEDIUM PARTICIPATION FFY 2015-2017</u>	<u>0%</u>
<u>STEP ONE BASE GOAL</u>	<u>4.7%</u>
TOTAL	4.7%

GOAL

4.7%

Analysis of Failure to Meet DBE Goal:

FST recognizes the need to assess past participation in determining goal accomplishment status. With no goal history occurring in the past three years, FST considers FFY 2018-2020 goal as a fresh starting point.

We are aware there is the difficulty of signing and maintaining certified DBE's in Arkansas to support the transit supply industry. The DBE application process discourages many businesses. AHTD is actively promoting existing certified DBE programs and their products to our subrecipients. AHTD requires subrecipients across the state to make a good faith effort to contact and do business with minority or DBE businesses. FST also encourages minority businesses to become certified DBE's in Arkansas.

RACE/GENDER NUTERAL AND RACE/GENDER CONSIOUS DETERMINATION

The next step is to forecast the race/gender-neutral and race/gender-conscious portion of the step two adjusted goal. It is stated in 49 CFR 26.51, the maximum feasible portion of your overall goal must be met using race/gender neutral means of facilitating DBE participation. Race/gender-neutral participation includes: 1) DBE's who win prime contracts through customary competitive procurement procedures; 2) DBE's who are awarded subcontracts on prime contracts that do not carry a DBE goal; and 3) DBE's who are awarded subcontracts in excess of the stated project goal.

The following considerations were made when determining the race gender-neutral and race gender-conscious component of the goal setting process.

Past Race/Gender-Neutral Participation by DBE's on Transit Projects

It is FST's understanding that DBE participation has been low statewide. This can be attributed to difficulty in identifying ready, willing, and able DBE's to participate in small procurements. The primary cause is low participation by DBE's in the certification process. FST will assist AHTD in their efforts to encourage potential DBE's to complete the required certification process.

The DBE Goal for FFYs 2018-2020 is 4.7% entirely with race-neutral DBE participation.

GENERAL REQUIREMENTS

Objectives

The objectives of Fort Smith Transit's DBE program can be found in the introduction section of this plan.

Applicability

Fort Smith Transit (FST) is the recipient of Section 5307 small urban federal transit funds.

Definitions

Definitions are contained in Section 26.5 of Part 26 for this program.

Record Keeping Requirements

- Uniform Report of DBE Awards or Commitments and Payments

FST will report DBE participation to the Federal Transit Administration (FTA) using the Uniform Report of DBE Awards or Commitments and Payments form found in Appendix B of 49 CFR Part 26. 49 CFR Part 26 is included as Attachment 4.

- Bidders List

FST will maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidders list includes the name and address of all non-DBE's and qualified DBE's.

FST will collect this information by ensuring, through contract clause, the bidders and subcontractors are qualified DBE's or non-DBE's by referencing the Unified Certification process as well as the Small Business Administration (SBA) directory.

- Contract Assurance

FST will ensure that the following clause is placed in every DOT assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

ADMINISTRATIVE REQUIREMENTS

DBE Program Updates

Since FST anticipates awarding more than \$250,000 in FTA operating assistance in FFY 2018-2020, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

DBE Liaison Officer (DBELO)

FST has designated the following individual as the DBE Liaison Officer:

Transit Superintendent
6821 Jenny Lind
479-783-6464
transit@fortsmithar.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that FST complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Transit Director concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBE's in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
5. Analyzes FTS's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Transit Director on DBE matters and achievements.
8. Provides DBE's with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBE's and community organizations to advise them of opportunities.

DBE Financial Institutions

It is the policy of FST to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on DOT assisted contracts to make use of these institutions. FST will make every effort to identify and use such institutions. We will also re-evaluate the availability of DBE financial institutions every year. To-date there have been no such institutions identified but will continue to research the availability.

Prompt Payment Mechanisms

- Prompt Payment

FST will include the following clause in each DOT assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contract received from FST. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of FST.

- Retainage

FST will include the following clause in each DOT assisted prime contract:

The prime contractor agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of FST.

Monitoring and Enforcement

FST has established an internal review process and will implement progressive project meetings to monitor and enforce the prompt payment and return of retainage.

Directory

FST has entered into an agreement with the Arkansas Highway and Transportation Department (AHTD) to utilize their DBE certification list. AHTD agrees to administer certifications and re-certifications, no change affidavits, notices of changes, personal net worth statements and any other necessary documentation from firms eligible to participate as DBE's. The directory lists the firm's name, address, phone number, date of the most recent certification and the type of work the firm has been certified to perform as a DBE. The directory is updated at least annually and is available through the AHTD website or hard copy by request. The latest directory may be found in Attachment 2 to this program document or at <http://arkansashighways.com> select Programs then "DBE Directory".

Overconcentration

FST has not identified that overconcentration exists in the types of work that DBE's perform.

Business Development Programs

FST has not established a business development program. We will re-evaluate the need for such a program every year.

Monitoring and Enforcement Mechanisms

FST will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBE's at contract award is actually performed by DBE's. This will be accomplished through the provisions of the Davis-Bacon employee interviews.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Small Business Participation

FST has incorporated a non-discriminatory element to its DBE program, in order to facilitate competition on DOT assisted projects by small business concerns. The Small Business Program is provided at Attachment 5.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-Asides or Quotas

FST does not use quotas in any way in the administration of this DBE program.

Overall Goals

FST will submit its triennial overall DBE goal to FTA on or before August 1 of the year specified by FTA.

FST will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

Goal Setting and Accountability

FST, on an annual basis, will analyze in detail the reason for the difference between the overall goal and the actual awards/commitments throughout the prior year. Revisions will be considered regarding the need for contract goals following each annual review.

Transit Vehicle Manufacturers Goals

FST will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, FST may, at its discretion and FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Good Faith Efforts Procedures

In those instances where FST's DBE goal does not meet the verified countable DBE anticipated participation, it will document its adequate good faith efforts to meet the DBE goal, even though it was unable to do so.

Counting DBE Participation

FST will count DBE participation toward overall goals as provided in 49 CFR 26.55.

DBE CERTIFICATION

Unified Certification Program

FST is a member of a Unified Certification Program (UCP) administered by the Arkansas Highways and Transportation Department (AHTD). The UCP will meet all the requirements of this section. FST will use and count for DBE credit only those DBE firms certified by the AHTD. Attachment 3 is a description of the UCP. For more information on the UCP, contact the AHTD at P.O. Box 2261, Little Rock, AR 72203-2261 or (501) 569-2000.